

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 503

CASE NO. 86-22

EMERGENCY ORDER

SEPTEMBER 22, 1986

On September 22, 1986, the Zoning Commission for the District of Columbia held a special public meeting in Zoning Commission Case No. 86-17 (Wisconsin Avenue Map Amendment), to decide whether to set a hearing to consider the amendment of the zone district classification of certain areas along Wisconsin Avenue. During that meeting, the Zoning Commission also considered a recommendation that it take emergency rulemaking action to amend the current zone district classifications. For the reasons set forth in this order, the Commission decided not to take emergency action to that effect, but to initiate instead this separate rulemaking proceeding, to consider amendment of section 8103 of the Zoning Regulations, relating to the vesting of construction rights, and to effect emergency rulemaking in this proceeding, as set forth herein:

Whereas, The District of Columbia Comprehensive Plan Act of 1984 Land Use Element Amendment Act of 1985, D.C. Law 5-187, became effective March 16, 1985; and

Whereas, Section 2 of the Zoning Act, as amended, D.C. Code § 5-414, (1981) requires that the text and map of the Zoning Regulations not be inconsistent with the Comprehensive Plan; and

Whereas, The Executive and Legislative branches of the District of Columbia government have invested substantial time and effort to prepare, adopt, and implement the Comprehensive Plan; and

Whereas, The current provisions of the Zoning Regulations of the District of Columbia allow a developer to apply for and be granted a permit to construct a building of the size and density which are allowed by the Zoning Regulations which are in effect at the time the permit application is filed; and

- Whereas, These provisions so operate even if, in a proceeding which is pending before the Zoning Commission when the application is filed, the Commission is considering a proposed reduction in the permitted size and density, and thereafter takes timely action to reduce the size and density; and
- Whereas , Analysis of the Comprehensive Plan demonstrates that the Zoning Commission, together with the District of Columbia Office of Planning, will be required to invest very substantial time and effort to address a variety of serious and complex issues, in order to assure compliance with the "'not inconsistent with"' requirement; and
- Whereas, This effort is inherently incapable of being hurried, if it is to be conducted in a reasonable, prudent, and businesslike way, and in accord with the requirements of due process; and
- Whereas, The current vesting provisions of the Zoning Regulations provide a means by which development which would be inconsistent with the Comprehensive Plan can be approved, completed, and remain as a nonconforming structure, notwithstanding such inconsistency; and
- Whereas , The Zoning Commission has recently decided to hold hearings in Zoning Commission cases numbered 86-12 (Reed-Cooke Map Amendment) and 86-17, to consider whether to amend the zone district classification of substantial Land areas, to the end of assuring compliance with the "not inconsistent with" requirement; and
- Whereas, These cases represent only a fraction of those which will be needed to address that issue; and
- Whereas, Inherent in the current vesting provisions is a substantial risk that a developer, knowing that the Zoning Commission intends to have a hearing to consider an amendment of the zone district classification of a site, could abrogate or significantly abridge the effectiveness of the proposed amendment; and
- Whereas, The functional integrity of the Comprehensive Plan is of paramount public importance; and
- Whereas, The public interest in maintaining and ensuring the Comprehensive Plan's functional integrity is overwhelmingly superior to any private interest in

building to the maximum scale permitted under extant limitations; and

Whereas , Evidence of a developer's intention to file an application for a building permit is not reasonably available to or accessible by public agencies, and is essentially within the exclusive control of the prospective developer; and

Whereas, The ongoing process through which the Zoning Commission is, and will be, considering action which will reduce development potential is a process which inherently and inevitably creates an incentive for a prospective developer to expedite preparations, to the end of securing approval to construct a building of a size and density which may later be precluded; and

Whereas, It is necessary and reasonable that the Zoning Commission address this issue in a manner which operates throughout the District, and is not limited to one area; and

Whereas, Section 1 of the Zoning Act (Act of June 20, 1938, 52 Stat. 797, also cited as Section 5-413 of the D.C. Code) establishes the authority of the Zoning Commission "to promote the health, safety, morals, convenience, order, prosperity,, or general welfare of the District of Columbia", and

Whereas, Section 1-1506 of the District of Columbia Code authorizes the Zoning Commission to take emergency action for a period not to exceed 120 days "for the immediate preservation of public peace, health, safety, welfare, or morals";

Therefore: The Zoning Commission resolves that an emergency exists which requires the immediate amendment of the Zoning Regulations of the District of Columbia, to protect the public welfare; and

Therefore, it is hereby ordered that, effective immediately on September 22, 1986, and for a period not to exceed 120 days from September 22, 1986, the Zoning Regulations are amended as follows:

1. Add a provision to regulate the processing of an application for a building permit, and the completion of work pursuant to a permit, if the application is filed when the Zoning Commission is considering a case to change the zone district classification of the site:

8103.6 [3202.6] If an application for a building

permit is filed when the Zoning Commission has pending before it a proceeding to consider amendment of the zone district classification of the site of the proposed construction, this subsection shall govern the processing of the application, and the completion of work pursuant to a permit.

8103.61 [3202.6(a)] If the application is filed on or before the date on which the Zoning Commission makes a decision to hold a hearing on the amendment, the processing of the application and completion of the work shall be governed by sub-sections 8103.4 [3202.4] and 8103.5 [3202.5].

8103.62 [3202.6(b)] If the application is filed after the date on which the Zoning Commission has made a decision to hold a hearing on the amendment, the application may be processed, and any work authorized by a permit may be carried to completion, only in accordance with the zone district classification of the site pursuant to the final decision of the Zoning Commission in the proceeding.

2. Make consistent technical changes, as follows:

Redesignate current sub-sections 8103.6 [3202.6] and 8103.7 [3202.7] as 8103.7 [3202.7] and 8103.8 [3202.8].

And:

[In sub-section 3202.8, delete "or 3202.6" and insert, in lieu thereof: "3202.6, or 3202.7"].

This order was adopted by the Commission at the special public meeting on September 22, 1986, by a vote of 4-1 (Patricia N. Mathews, Lindsley Williams, Maybelle T. Bennett, and John G. Parsons to adopt; George M. White, opposed). In accordance with section 105 of the District of

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Columbia Administrative Procedure Act, as amended, D.C.  
Code, section 1-1.506 (1981), this order became effective  
immediately upon adoption on September 22, 1986,

Attested By:



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EDWARD L. CURRY  
Acting Executive Director

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